LIBRARY
SUPREME COURT, U. S.

FILED
FEB 12 1968
JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 1106

ARLENE MANSON)
)
Petitioner)
)
v)
)
STATE OF INDIANA)
)
Respondent)

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF INDIANA

Palmer K. Ward
919 Electric Bldg.,
Indianapolis, Indiana

Attorney for Petitioner.

I N D E X

	Page
Opinion below	2
Jurisdiction	2
Questions presented	2
Constitutional provisions	3
Statement of the case	4
How the Federal question was raised	7
Argument	8
Appendix "A"	
Supreme Court of Indiana	1
Appendix "B"	
Judgment of trial Court	X

Citations:

Weeks v. United States, (1914) 232 U.S.383, 34 S. Ct.341, 58 L. Ed. 652.	9
Potter v. United States, (1966), 362 F.(2) 493 (C.A. 5)	11
Jones v. United States, (1960) 362 U.S.257, 80 S. Ct.725, 4 L. Ed. (2) 697.	12
4th Amendment, U.S. Constitution	3
14th Amendment, U.S. Constitution	3
Art. 1, Sec. 11, Constitution of the State of Indiana.	4

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No._____

ARLENE MANSON	)
	)
Petitioner	)
	)
v	)
	)
STATE OF INDIANA	)
	)
Respondent	)

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF INDIANA

Arlene Manson, by counsel, Palmer K. Ward, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Indiana in affirming the judgment of the Circuit Court of Howard County, Indiana upon her conviction of the crime of grand larceny on the 2nd day of October, 1967 and the denial of petitioner's petition for rehearing which was denied on November 13, 1967.

OPINION OF THE SUPREME COURT OF INDIANA

The opinion of the Supreme Court of Indiana is reported at 229 N. E. (2) 801 and is reproduced herein in Appendix "A" to this petition.

JURISDICTION

1. The judgment of the Supreme Court of Indiana was entered on October 2, 1967.

2. A timely Petition for Rehearing was filed and overruled by the Supreme Court of Indiana on November 13, 1967.

3. The jurisdiction of this Court is invoked under the provisions of Title 28, United States Code, Section 1257 (3).

QUESTIONS PRESENTED

1. Can an arrest and search of an automobile be held valid in regard to the determination of probable cause when the information furnished to the arresting officer is triple hearsay? The arrest was upheld by the Supreme Court of Indiana although the arresting officer received his information from a radio dispatcher who had a call from a third person who

had been told certain facts by a fourth person.

2. Does a person arrested in an automobile have "standing" to move to suppress evidence obtained by an illegal arrest when that person does not own the automobile nor is she in possession and control of the automobile although she was a passenger in said automobile at the time of her arrest?

CONSTITUTIONAL PROVISIONS

United States Constitution, Fourth Amendment:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause supported by Oath or affirmation, and particularlly describing the place to be searched, and the persons or things to be seized."

United States Constitution, Fourteenth Amendment:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or

enforce any law which shall abridge the priviliges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

CONSTITUTION OF STATE OF INDIANA
Article I, Section 11:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized."

STATEMENT OF THE CASE

Petitioner, and another, were arrested and charged with the crime of grand larceny in the Circuit Court of Howard County, Indiana on the 26th day of November, 1962. On August 8, 1965 petitioner was sentenced to the Indiana Woman's Prison for not less than one (1) nor more than ten (10) years, fined in the sum of Five Hundred Dollars and costs and disfranchised for a period of three years said judgment being reproduced herein in Appendix "B" to this

petition.

On February 5, 1964, and prior to trial, the petitioner filed her Motion to Suppress Evidence, which omitting formal parts is as follows:

> "That said search was without a warrant and in violation of the Defendant's rights as guaranteed by Article I, Section 11 of the Constitution of the State of Indiana." (Tr. p. 11.)

A hearing was held on the Motion to Suppress, the pertinent evidence there adduced is as follows:

Evidence of the defendant:

ROSE, Frank Direct Examination

I am a police officer and arrested the defendant. I did not have a warrant for the arrest of either defendant. I did not know the defendant when I placed her under arrest; she was seated in a car with the other defendant. I arrested them for shoplifting, I did not see them take anything nor did I see anything in their possession at that time. I received a radio message that two colored subjects were at the Maple Crest

Shopping Center, believed to be in Golightly's Store, they were seen in a blue 1960 Oldsmobile with an Indianapolis prefix; they were believed to have put some stolen merchandise into the trunk of the automobile. When I arrived I saw the defendants in Golightly's store; they left the store and went to Grant's where they got a sack of candy and then went to the automobile, I then arrested them both for shoplifting; told the defendant, Suber, I wanted to search the car trunk and he opened it and I found eight suits and a woman's coat. (Tr. Ev. pp. 104-110.)

ROSE, Frank — Cross Examination

I made the arrest on the basis of the radio report I received. I talked to Mrs. Umbarger and she stated she had seen the suspects in the car and she gave me the license number-she was in a car nearby and saw the suspects twisting around in the car-the man got out and took a laundry bag siwth something in it and placed it in the trunk of the car. (Tr. Ev. pp. 110-112.)

UMBARGER, Donna Direct Examination

I work at Miller's Department Store. I saw the defendants in front of our store; a customer came into the store and described the two defendants and said they had been seen putting something in their car and they thought they had taken it from Miller's store. I saw the defendants put something in the trunk of the car; they were twisting around in the car. They then went back to Golightly's and I called the police. I described the car, the license number and said we supsected them of shoplifting, this was a suspicion on my part. (Tr. Ev. pp. 114-117.)

UMBARGER, Donna Cross Examination

A customer told me they had seen the two subjects steal some merchandise from Miller's. (Tr. Ev. p. 118.)

HOW THE FEDERAL QUESTION WAS RAISED

The question of the illegal arrest was first raised by the defendant, as outlined above, by her written Motion to Suppress, prior to the trial of the case in chief.

A memorandum was filed after the hearing on the Motion to Suppress. (Tr. pp. 15-16.) The matter was again raised in the Motion For New Trial. (Tr. pp. 18-21.) At the time of sentencing an additional memorandum was filed specifically raising the Federal question. (Tr. pp. 25-37.) Also an additional memorandum was filed in support of the Motion for New Trial. (Tr. pp. 39-44.) The question was briefed and argued in the Supreme Court of Indiana.

ARGUMENT

A. Whether there was probable cause for an arrest without a warrant is always a judicial question to be determined after full development of the relevant, material facts.

It is respectfully submitted that the decision by Judge Arterburn of the Indiana Supreme Court has for all practical purposes put the decision as to probable cause in the hands of the police, without any judicial determination.

The evidence adduced by the defendant at her hearing on the Motion to Suppress

clearly shows that the arresting officer did not have an arrest warrant or a search warrant nor was the defendant seen committing a misdemeanor within the view of the arresting officer. The question is simple. Did the officer have probable cause to arrest the defendant?

An unknown informant tells Mrs. Umbarger that two colored suspects were seen putting something in a car and the unknown informant thought it had been stolen from Miller's store. Mrs. Umbarger saw the suspects twisting around in a car and saw them put something in the trunk of the car. Mrs. Umbarger called the police, described the car, the license number and said we suspected them of shoplifting. The police radioed this information to Officer Rose who observed the defendants in two stores and arrested them, in his words, on the basis of the radio report I received from headquarters.

This Court held in Weeks v. United States (1914), 232 U.S. 383, 34 S. Ct.341,

58 L. Ed. 652:

> "The effect of the 4th Amendment is to put the Courts of the United States and Federal officials, in the exercise of their power and authority, under limitations and restraints as to the exercise of such power and authority, and to forever secure the people, their persons, houses, papers and effects, against all unreasonable searches and seizures under the guise of law. This protection reaches all alike, whether accused of crime or not, and the duty of giving to it force and effect is obligatory upon all intrusted under our Federal system with the enforcement of the laws. * * * The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land."

These principles, through the Fourteenth Amendment of the Constitution of the United States, been made applicable to officers and courts in every jurisdiction in the United States, state or federal.

We submit that in order for there to be probable cause for the arrest herein the information furnished in the first place must be reliable. The evidence

shows that an unknown person made a statement to Mrs. Umbarger who called the police who radioed officer Rose who made the arrest.

As was stated in Potter v. United States (1966), 362 F.(2) 493 (C.A.5) at page 498:

> "If reliable information is to be the sole and uncorroborated basis of probable cause, it finds no support in the communications of an unknown informer. It is self evident that none can know the reliablility of an unknown source, and reliability is the controlling factor, Costello v. United States, 9 Cir., 1962, 298 F.2d 99, cert. den. 376 U.S. 930, 84 S. Ct. 699, 11 L. Ed. 2d 650."

The arrest herein, and subsequent search of the automobile, was made by officer Rose, not for any transgressions of the petitioner in his presence, or for anything he observed with his own senses but was made solely on the basis of a radio message based upon a hearsay statement of an unknown and therefore unreliable informant.

Clearly petitioner's rights as guaranteed by the fourth amendment to

the Constitution of the United States have been violated and certiorari should be granted.

B. Certiorari should be granted herein for the further reason that the Supreme Court of Indiana held that the petitioner did not have "standing" to ask that the evidence be suppressed since she did not own the car, and was not in possession or control of it.

This holding is in direct conflict with the decision of this Court in the case of Jones v. United States(1960), 362 U.S. 257, 80 S. Ct. 725, 4 L. Ed.(2) 697 where the Court said:

> "No just interest of the government in the effective and rigorous enforcement of the criminal law will be hampered by recognizing that anyone legitametely on premises where a search occurs may challenge its legality by was of a motion to suppress, when its fruits are proposed to be used against him."

The petitioner herein was legitametely in the automobile owned and driven by the defendant Suber and the fruits

of the search of the automobile were introduced into evidence against her at the trial of this cause.

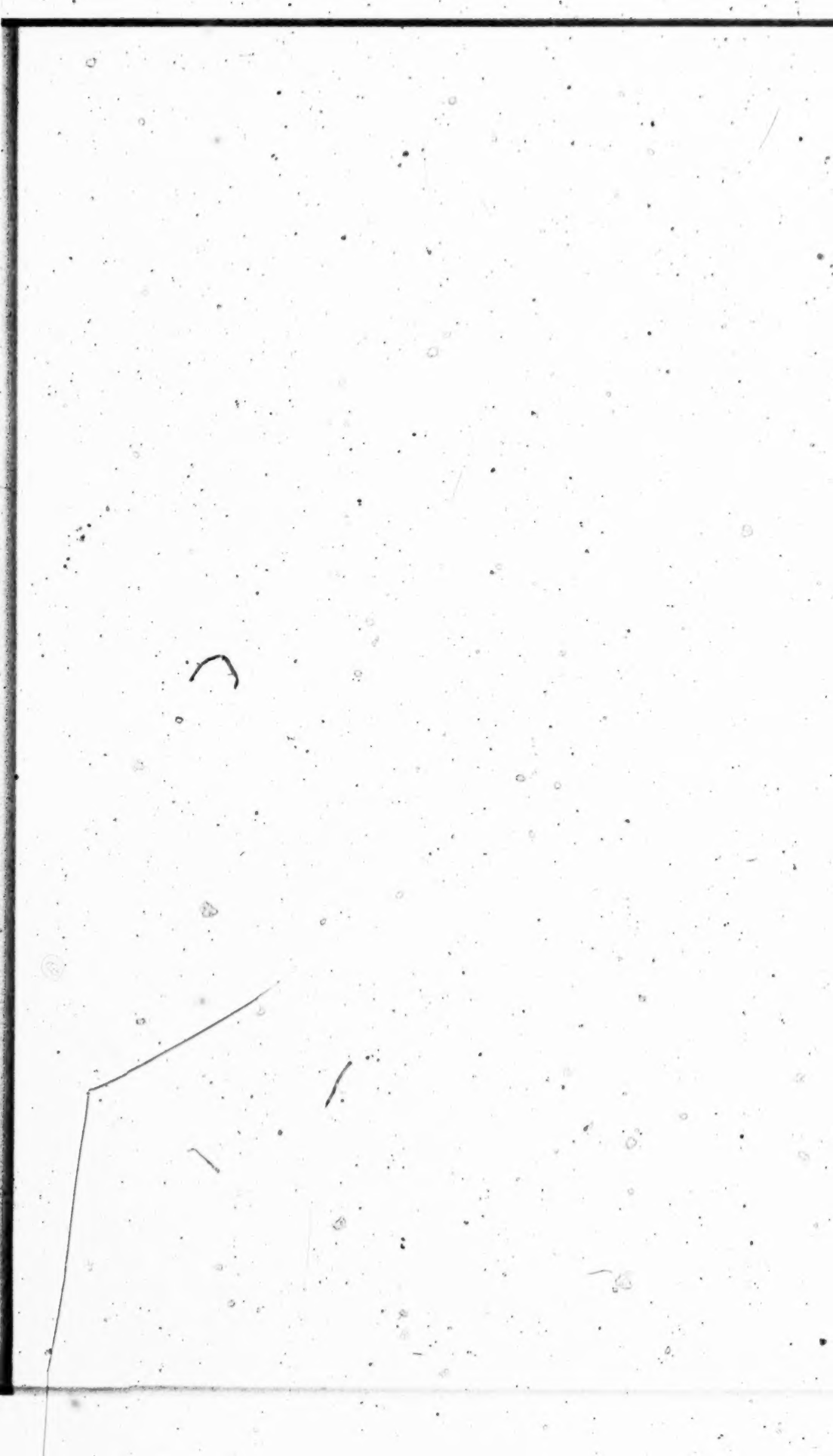
Clearly the petitioner has "standing" to move to suppress the evidence that was used against her at the trial.

CONCLUSION

For the reasons herein stated we respectfully pray the Court to issue a Writ of Certiorari to the Supreme Court of Indiana to review their final judgment.

Palmer K. Ward
919 Electric Bldg.,
Indianapolis, Indiana

Attorney for Petitioner.



APPENDIX "A"

Opinion of the Supreme Court of Indiana:

ARTERBURN, Judge

The appellants were charged and found guilty of grand larceny and sentenced accordingly. They have appealed. The specifications are that the trial court erred in overruling the motion to suppress evidence obtained in the search of defendant's Suber's automobile. The points presented in the briefs center mainly about this contention.

The evidence shows that officer Frank Rose of the Kokomo police department received a radio message over the police radio syatem that there were two colored subjects at Maplecrest shopping center and believed to be in Golightly's store, and they were seen in a blue 1960 Oldsmobile with Indianapolis prefix on the license number, and that they had put some stolen merchandise in the trunk. When officer Rose arrived, he went to Golightly's store at the shopping center

and apparently found the two colored persons and followed them as they circled about the store, came out and went into another store known as Grants, made a small purchase and then went to the parking lot to the Oldsmobile described in the radio message. Mr. Suber, the appellant, started his car and the officer then arrested him "for shoplifting."

The officer says that he did not see the appellants do anything which would cause him to believe they were shoplifting, but he did have reason to believe because of the police call that there was stolen merchandise in the trunk of the car. He thereupon searched the car and in the rear trunk found a laundry bag with eight suits on clothes hangers and pants still on clothes hangers, rolled up; also a lady's coat that had a $100.00 price tag thereon. None of the merchandise in the back of the car was wrapped for purchase. The officer stated that appellant Suber said upon inquiry that the merchandise came from the Golightly store.

It is undisputed that a search of a car without warrant after a lawful arrest of the one in possession is not constitutionally interdicted. Carroll v. United States (1925), 267 U.S. 132, 45 S. Ct. 280, 69 L. Ed. 543; 25 I.L.E., Search & Seizure, Sec. 22, p. 422.

Parenthetically, we may say appellant Manson has no standing to ask that the evidence obtained in the search of the car be suppressed, since she did not own it, and was not in possession or control of it. 25 I.L.E. Search & Seizure, Sec. 5, p. 417.

It is argued that there was no probale cause for the police officer to make the arrest and subsequent search based upon the arrest, for the reason that the only information he had was based upon the police radio message to him from the dispatcher at police headquarters. In support of that it is further urged that the radio broadcast made from police headquarters

was based solely upon the hearsay of Mrs. Donna Umbarger, who was informed by unamed persons that the appellants had taken the merchandise from Golightly's.

In determining the existence of probable cause for an arrest or search, must we go behind the information which a police officer receives, which appears to him at the time and under the circumstances to be reliable and from a reliable person, and nevertheless examine the basis of the information and its reliability?

It is the law that the fruits of the search cannot be used to support or justify an illegal search. Idol v. State (1953), 233 Ind. 307, 119 N.E. 2d 428.

Likewise, it seems to us that to justify or condemn the good faith search by a police officer upon hindsight information, or which he was not aware, would be illogical. Probable cause justifying an arrest without a warrant exists where facts and circumstances within the arresting officer's knowledge or of which he had

reasonably trustworthy information, would lead a reasonably prudent person under the conditions at the time to believe a crime had been committed.

The right to arrest without warrant grew out of the need to protect the public safety by making prompt arrests. It had its origin in the ancient "Hue and Cry", upon which all hearing the alarm were bound to join in pursuit of a felon. The "Hue and Cry", if repeated by another, would be hearsay.

In this case the arresting officer acted upon an alarm over a police radio to him.

The law looks at the facts and circumstances as they were presented to the police officer who had to make a prompt decision. It is not necessary that the information be direct. Hearsay may at times be sufficient basis for probable cause for arrest or search.

> "The fact that the information received by the arresting officers upon which they began to look for appellant came to them through the

> the medium of an informer who received his information from another, does not render such information incredible. The general rule against the admission of hearsay evidence has never been applied in inquiries into the existence of probable cause, Hanger v State(1928), 199 Ind. 727, 160 N.E. 449; Gwinn v. State (1929), 201 Ind. 420, 166 N.E. 769, and it manifestly would be impossible to enforce the law if it was necessary to provide the police officers who are sent out to make arrests with direct first-hand knowledge concerning all such matters." Hinds v. State (1930), 201 Ind. 563,567, 170 N.E. 539, 540.

Obviously in the case before us the police officer, if he were to do his duty promptly, could not be delayed by checking the reliability of the information behind the call over the police radio. He must by necessity rely upon headquarters. A police syatem, to be effective, must be be one in which the members work together, keeping each other informed and relying upon the actions and communications between members. With the use of automobiles in the commission of crime and escape, law enforcement officers are compelled to act

with greater speed and less hesitancy than in years past. We find probable cause exists in this case for the arrest and search made by the officer. Scaffido v. State (1934), 215 Wis. 389, 254 N. W. 651; United States v. Smith (1966), 6 Cir., 357 F. 2d 318; 6 C.J.S. Arrest, Section 6, p. 600.

It is also urged that the evidence is not sufficient to sustain the finding of guilty. This contention centers mainly upon the argument that there is no evidence that these goods came from the Golightly store at the particular place where the appellant's were arrested, since Golightly's had three other stores at other places in Kokomo. However, in our opinion, there is sufficient evidence from which a jury or the court could find that this property came out of the Golightly store at the place where the appellants had parked their car and were found immediately following the radio call. There can be no doubt that this

was not purchased merchandise, but stolen merchandise. The tags were still attached, the suits were still on hangers, and the merchandise was not wrapped in shopping paper. The inventory showed the shortage of goods in the store. There was an empty space on the rack in the store where the suits of this particular size would have been located. There is no evidence that these appellants were in any of the other Golightly stores in other parts of the city. In our opinion, the circumstantial evidence here is sufficient to convince any reasonable person that this property came out of Golightly's store at the place where the appellants were arrested and were discovered with the goods.

Finally, appellant Suber, when he was arrested and asked where the merchandise came from, stated "all the merchandise came from Golightly's Store". From this statement one would conclude he referred to the store at the location where they

were then talking. The evidence was sufficient in this case.

It is also contended, but we think not too seriously, that the police officer did not make a proper arrest since he stated he was arresting appellants "for shoplifting". It was pointed out that there was no statute making "shoplifting" under that name a crime at that time. To us, this is not important. The importantance is they were arrested, and "shoplifting" in our opinion, comprehends larceny in lay language. Certainly larceny was a crime at the time.

The judgment is affirmed.

HUNTER, C. J., and LEWIS and MOTE, JJ., concur

JACKSON, J., concurs in result.

APPENDIX "B"

Judgment of the Court:

"The Court now Orders said defendant sentenced to the custody of Indiana Women's Prison, Indianapolis, Indiana for a term of not less then one (1) year nor more than ten (10) years and said defendant is fined Five Hundred ($500.00) Dollars and costs incurred by this action. The Court now orders said defendant disfranchised for three years." (Tr. p. 24.)